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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEANDRO ROGER HERNANDEZ,

Petitioner - Appellant,

v.

RUNNELS, Warden,

Respondent - Appellee.

No. 07-15653

D.C. No. CV-03-04701-JSW

MEMORANDUM \*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted September 14, 2009\*\*  
San Francisco, California

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Leandro Roger Hernandez, a California state prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. We have jurisdiction under 28 U.S.C. § 2253(a). We affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

This court reviews de novo the district court decision to deny a petition for habeas corpus. *Lambert v. Blodgett*, 393 F.3d 943, 964 (9th Cir. 2004). The district court properly denied this claim because the admission of gang evidence did not have a substantial and injurious effect on the jury's verdict. *Brecht v. Abrahamson*, 507 U.S. 617, 637 (1993); see *Fry v. Pliler*, 551 U.S. 112, 121–22 (2007). Rather, the jury could draw the permissible inference that Hernandez was more likely the owner of the 28.8-gram rock of methamphetamine because of gang indicia present with the methamphetamine and on Hernandez's person. See *Boyde v. Brown*, 404 F. 3d 1159, 1172 (9th Cir. 2005) (citing *Jammal v. Van de Kamp*, 926 F.2d 918, 920 (9th Cir. 1991)). Moreover, the trial court gave a proper limiting instruction to the jury, which we assume the jury properly followed and which mitigated the likelihood that the jury would draw an impermissible inference from the gang evidence. See *Weeks v. Angelone*, 528 U.S. 225, 234 (2000).

**AFFIRMED.**